

INITIAL STATEMENT OF REASONS:

This action will amend provisions governing the sample or specimen collection of DNA. Currently, if an inmate or parolee refuses to submit a DNA sample, the Department must get a court order to obtain a sample. This is quite burdensome, not only to the Department, but to the courts, and violates the intent of Penal Code (PC) Section 295 et seq.

Senate Bill (SB) 1242, 2001-2002 Regular Session, amended PC Section 298.1 to allow the use of reasonable force to collect blood specimens, saliva samples, or thumb or palm print impressions from inmates or parolees who, after requested to do so, refuse to provide such samples.

These regulations will bring these new procedures into compliance with the provisions of SB 1242.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

Section 3025 is amended.

Subsection (a) is amended to provide that once the specified specimens are obtained, they be submitted to the Department of Justice (DOJ) as soon as administratively practicable. This brings the regulations into compliance with PC Section 296.1(c). In addition, the phrase “after receiving written notification in accordance with PC Section 298.1,” has been stricken. The obligation to provide a specimen exists without written notification to the inmate or parolee. The legal obligation/duty attaches at the moment the offender is convicted of a qualifying offense. The phrase was stricken for that reason. Also, a writer’s palm print impression was added to the list of required specimens because the Palm Print Card provided by the DOJ requires such an impression.

Subsection (b) is unchanged.

Subsection (c) is amended to cite the correct statute. Also, the phrase “after receiving written notification in accordance with PC Section 298.1,” was deleted for the same reasons explained above under subsection (a).

Subsection (d) is amended to cite the correct statute. In addition, this subsection allows local law enforcement authorities to designate a location where parolees are to have their specimens collected. This is necessary as local law enforcement authorities will be collecting specimens from parolees.

Subsection (e) is amended to provide for the disposition of specimens and to bring the regulations into compliance with the provisions of PC Section 298. This amendment is necessary to provide guidance to staff as to where the specimens are to be sent.

Subsection (f) is amended to provide that only designated staff can handle forms or the specimens. This is necessary in order to ensure that the specimens and/or forms are handled and dispersed properly.

Subsection (g) is unchanged.

Subsection (h) is adopted to provide the consequences facing a parolee or inmate if he or she refuses to provide required specimens after being given written notification to do so. This subsection brings the regulations into compliance with PC Section 298.1.

Subsection (i) is adopted to provide that the use of reasonable force, as defined, may be used to obtain the required specimens from an inmate or parolee. Reasonable force may only be used after the supervising officer on duty has given written authorization to use such force. This is necessary to ensure that a person with authority approves the use of reasonable force to obtain specimens, and to bring the regulation into compliance with the provisions of PC Section 298.1(b) and SB 1242.

Subsection (j) is adopted to specifically state that all efforts to secure requisite specimen samples, on a voluntary basis shall be employed, before the use of reasonable force is imposed. This is necessary to inform inmates and parolees that staff will use reasonable force to obtain the needed samples if the inmates or parolees do not cooperate. This, however, will only occur after all other efforts have failed.

Subsection (k) is adopted to include provisions for the videotaping of the use of reasonable force to obtain DNA samples when a cell extraction must be performed. This is necessary to bring the regulations into compliance with PC Section 298.1 and to protect the Department from possible litigation.

Section 3315 is amended.

Subsection (a) is amended to strike out the provisions that allow the refusal of submitting to specimen collection and that forced compliance will not occur without a court order. This is necessary to be consistent with Section 3025 of the California Code of Regulations, and to bring the regulations into compliance with PC Section 298.1 and SB 1242. As stated above, compliance will be compelled with the use of reasonable force, if necessary.